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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X	
FEDERICO DANIEL, on behalf of himself, and	:
others similarly situated,	:
	:
Plaintiffs,	:
	:
-against-	:
	:
TIME MOVING, INC., and TIME RECORD	:
MOVING AND STORAGE, INC., and JAMES	:
DOWSE,	:
	:
Defendants.	:
-----X	

16 Civ. 9616(JMF)

**DEFENDANTS' ANSWER**

Defendants, by and through their attorneys, Clifton Budd & DeMaria, LLP, hereby respond to the enumerated paragraphs of the Complaint as follows:

1. Admit the truth of the following numbered paragraphs of the Complaint:  
22, 36.
2. Deny the truth of the following numbered paragraphs of the Complaint: 1,  
2, 6-19, 23-35, 37-64.
3. Lack knowledge or information sufficient to form a belief as to the truth of  
the following numbered paragraphs of the Complaint: 5.
4. Neither admit nor deny the truth of the following numbered paragraphs of  
the Complaint, and refer all legal conclusions contained therein to the Court for resolution: 3, 4,  
20, 21.

5. As and for a First Defense, Plaintiff's claims are barred, in whole or part, by applicable periods of limitations.

6. As and for a Second Defense, Plaintiff's claims are barred to the extent that he seeks recovery for activities not compensable, including traveling to and from the actual place of performance of the principal activities which he was employed to perform, and activities which are preliminary and postliminary to said principal activities.

7. As and for a Third Defense, Defendants are entitled to a set-off for all monies unlawfully misappropriated from Defendants by Plaintiff.

8. As and for a Fourth Defense, Defendants are entitled to a set-off for all monies paid to Plaintiffs for any hours not worked.

9. As and for a Fifth Defense, the individual defendants are not "employers" under the FLSA or the NYLL and cannot otherwise be held individually liable.

10. As and for an Sixth Defense, Plaintiff fails to state claims upon which relief can be granted, as he is not entitled to any monetary payments beyond what he has already been paid.

11. As and for a Seventh Defense, the named defendants are not joint employers.

12. As and for an Eighth Defense, any violation of the FLSA or New York Labor Law on the part of Defendants (and Defendants expressly deny any such violation) was inadvertent or the product of neglect, and was not willful.

13. As and for a Ninth Defense, Plaintiffs' claims are barred, in whole or in part, by the doctrines of estoppel, unclean hands and/or laches.

14. As and for a Tenth Defense, Plaintiff is not entitled to the relief sought because Plaintiff was, at all relevant times, exempt under the Motor Carrier Act exemption. Defendants are motor carriers and/or private motor carriers, whose employees are within the authority of the Secretary of Transportation to establish qualifications and maximum hours of service pursuant to section 204 of The Motor Carrier Act of 1935. Plaintiff loaded commercial vehicles in furtherance of defendants' operations and was responsible for doing so safely and properly. Plaintiffs' activities affected the safety of defendants' operations.

**WHEREFORE**, Defendants respectfully request that this Court dismiss Plaintiff's Complaint in its entirety and award defendants their costs, disbursements and reasonable attorneys' fees and such other and further relief as the Court deems just and proper.

Dated: January 27, 2017  
New York, New York

Respectfully submitted,  
CLIFTON BUDD & DeMARIA, LLP  
Attorneys for Defendants



By: \_\_\_\_\_  
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